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## CHAPMAN v. KITE et al.

June 16, 1921.

[107 S. E. 702.]

**1. Public Lands (§ 183\*)—Evidence Held to Sustain Decision Land Not Waste and Unappropriated at Time of Grant from Commonwealth.**—Evidence held to justify the trial court's decision determining the issues of fact against the cross-complainant's contention that the land in controversy was waste and unappropriated land at the time of his grant from the commonwealth.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 424.]

**2. Appeal and Error (§ 882 (2)\*)—Partition (§ 17 (2)\*)—Court Had Jurisdiction to Annul Grant from Commonwealth to Cross-Complainant; Party Invoking Jurisdiction of Equity by Intervening Cannot Complain that Court Exceeded Jurisdiction.**—Under Code 1919, § 444, in view of section 486, in suit to partition certain realty between heirs at law wherein a cross-bill was filed by a third person claiming title under a grant from the state, a court of equity, after determining the issues of fact against cross-complainant, namely, that the land in controversy was not waste and unappropriated land at the time of his grant, could repeal, set aside, and annul his grant from the commonwealth, and cross-complainant cannot complain on his appeal that the court exceeded the jurisdiction which he invoked by intervening the partition suit.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 651.]

Appeal from Circuit Court, Madison County.

Suit by J. W. Kite and others against the unknown heirs of Thomas Shirley, wherein Thomas A. Chapman filed cross-bill. From decree for complainants, cross-complainant appeals. Affirmed.

*Browning & Browning*, of Orange, and *John S. Chapman*, of Stanardsville, for appellant.

*R. J. Thrift*, of Charleston, W. Va., *N. G. Payne*, of Madison, and *Grimsley & Miller*, of Culpeper, for appellees.

## MIHALCOE et al. v. HOLUB.

June 16, 1921.

[107 S. E. 704.]

**1. Husband and Wife (§ 4\*)—Husband Must Support Wife Independently of Her Estate.**—A husband is under legal duty to support

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

his wife independently of any separate estate which she may possess.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 204.]

**2. Husband and Wife (§ 19 (3)\*)—Husband Living Apart from Wife without Her Fault under Duty to Support Her, and She Can Pledge His Credit.**—When husband and wife live apart through no fault of the wife, the husband's duty of support is not affected by the fact of the separation, and he is liable to third persons who furnish the wife with necessary means of support on his credit; she having authority to pledge his credit for such purpose.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 227.]

**3. Husband and Wife (§ 19 (5)\*)—Wife Living Apart from Husband through Own Fault Forfeits Right of Support.**—A wife who separates from the husband due to her own fault forfeits her right of support, and third persons cannot hold the husband liable for necessities furnished her in the absence of an express contract on his part to pay for them.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 226.]

**4. Husband and Wife (§ 232 (1)\*)—Burden of Proving Fault as to Separation upon One Furnishing Necessaries to Wife.**—The burden of proof that the husband was at fault where the husband and wife have separated, and that the articles furnished or services rendered to the wife come within the legal definition of necessities and were in a legal sense furnished or rendered on his credit rests on the party seeking to hold him.

[Ed. Note.—For other cases, see 11 Va.-W. Va. Enc. Dig. 348.]

**5. Husband and Wife (§ 235 (2)\*)—Husband Not Bound for Necessaries Furnished Wife without Reference to Any Duty on His Part.**—A husband is not bound for necessities furnished the wife without reference to any duty or obligation on his part, and whether necessities have been furnished under circumstances rendering him liable, if there is a dispute on the facts, is a question for the jury.

[Ed. Note.—For other cases, see 7 Va.-W. Va. Enc. Dig. 227.]

**6. Parent and Child (§ 3 (1)\*)—Father Owes Children Duty of Maintenance.**—A father owes infant children the duty of maintenance.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 638.]

**7. Parent and Child (§ 3 (1)\*)—Father Liable for Support of Child He Abandons and Drives from Home.**—If a father abandons his infant child or drives him from home, he is liable to any person who furnishes the child necessary support, but such person has the burden to prove it was an unjustified abandonment, that the support furnished was necessary, and that the credit of the father was the basis of the advances in contemplation of law.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 638.]

**8. Parent and Child (§ 3 (1)\*)—Parent Not Liable for Support**

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

**Furnished Child Voluntarily without Reference to His Duty.**—The liability of a parent for necessities furnished his infant child wrongfully abandoned or driven from home does not attach where the support has been assumed by others as a purely voluntary undertaking without any regard to the duty or obligation on the father's part.

**9. Husband and Wife (§ 232 (1)\*)—Parent and Child (§ 3 (3)\*)—Fact of Relationship between Father Furnishing Support to Daughter and Children Abandoned by Husband and Father Not Controlling on Husband's Obligation to Pay.**—In an action by a father for support of a married daughter and her children, deserted and abandoned by their husband and father, the fact of relation between plaintiff father and his daughter and grandchildren is proper for consideration in determining whether the support furnished was due to a purely voluntary assumption or gratuity or was on the credit of defendant husband, but is not alone sufficient to require proof of an express contract as a condition to a recovery.

[Ed. Note.—For other cases, see 14 Va.-W. Va. Enc. Dig. 800.]

**10. Parent and Child (§ 3 (1)\*)—Husband Whose Wife Refused Offers to Help in Support of Infants Not Liable to Her Relatives Therefor.**—Where a wife, the mother of infant children, retained them with her at her parents' against the express wishes of their husband and father, and declined to come to the husband or receive any aid from him, and spurned offers on his part to help them such husband and father is not liable for the support of the infants to the wife's parents and brothers.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 638.]

**11. Husband and Wife (§ 235 (3)\*)—Instruction Husband Not Obligated to Support Wife Living Apart from Him without Cause Sustained by Evidence.**—In an action by the mother and brothers of a wife to recover support furnished her and her infant children while living apart from defendant husband with them, instruction that the husband is not bound by law to support his wife or furnish her with necessities while living separate and apart from him without his consent and without good and sufficient reason or cause held sustained by evidence.

Error to Circuit Court, New Kent County.

Action by John Mihalcoe and others against P. L. Holub. Judgment for defendant, and plaintiffs bring error. Reversed.

*Lewis & Sutton*, of West Point, and *Roger T. Gregory*, of Tunstall, for plaintiffs in error.

*Nance & Nance*, of Winston-Salem, N. C., and *M. H. Barnes*, of Providence Forge, for defendant in error.

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